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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SOFTWARE RIGHTS ARCHIVE, LLC,

Case No. 12-CV-3970 RMW

Plaintiff,

**ORDER REGARDING DISCOVERY  
DISPUTE JOINT REPORT # 1**

**[Re: Docket No. 40]**

FACEBOOK, INC.,

Defendant,

SOFTWARE RIGHTS ARCHIVE, LLC,

Case No. 12-CV-3971-RMW

Plaintiff,

v.

LINKEDIN CORPORATION,

Defendant,

SOFTWARE RIGHTS ARCHIVE, LLC,

Case No. 12-CV-3972-RMW

Plaintiff,

v.

TWITTER, INC.,

Defendant.

1                   Defendants Facebook, Inc., LinkedIn Corporation, and Twitter, Inc. (collectively,  
 2 "defendants") seek an order requiring plaintiff Software Rights Archive, LLC ("SRA") to reduce  
 3 the total number of claims asserted in this action from 74<sup>1</sup> to 30 claims total in advance of the  
 4 March 29, 2013 deadline for service of invalidity contentions. Defendants argue that requiring  
 5 SRA to reduce the claims as such "will promote judicial economy and efficiency and streamline  
 6 this case," while at the same time "giving SRA a sufficient number and diversity of claims to  
 7 pursue." Disc. Dispute Joint Rep. 2-3 (Dkt. No. 40). Defendants contend that limiting the  
 8 asserted claims at this stage does not violate SRA's Due Process rights because SRA is permitted  
 9 to "seek leave to add additional claims upon a showing that the additional claims present unique  
 10 issues." *Id.* at 3 (citing *In re Katz Call Processing Litigation*, 639 F.3d 1303, 1312 (Fed. Cir.  
 11 2011)).

12                   SRA argues that requiring it to select 30 claims at this stage is premature and violates its  
 13 Due Process rights because, according to SRA, it "has not been provided sufficient discovery as  
 14 to the accused backend systems of [d]efendants to review issues of infringement and damages."  
 15 *Id.* 5. SRI alleges that such an order would be akin to requiring SRA to "blindly guess at which  
 16 claims present unique infringement and validity issues." *Id.* at 6. SRA proposes that it is willing  
 17 to limit its claims to 30 by August 16, 2013, the court ordered deadline for SRA to serve updated  
 18 infringement contentions, which SRA alleges will allow for sufficient "technical discovery." *Id.*  
 19 at 5-6. SRI conditions this proposal on the court ordering defendants "to limit [their] invalidity  
 20 contentions to four anticipatory and four obviousness combinations." *Id.* at 8.

21                   The court is not persuaded that requiring SRI to limit its asserted claims to 30 at this stage  
 22 presents any Due Process issue. The Case Management Scheduling Order provides SRI the  
 23 opportunity to amend its infringement contentions on August 16, 2013, upon a showing of good  
 24 cause. Dkt. No. 39. To the extent that RSI's technical discovery does give rise to additional  
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26                   <sup>1</sup> In this number, defendants include claim 5 of the '571 Patent ("claim 4" appeared twice in RSI's  
 27 chart, but the second instance of "claim 4" quoted the language of claim 5); claim 28 of the '494  
 28 Patent (listed in the pleadings but not charted by SRA); and two claims against Facebook and one  
 against LinkedIn that are dependent on claims cancelled during reexam that were not rewritten in  
 independent form.

1 claims presenting unique questions of validity, RSI can amend its asserted claims at that time to  
 2 include those additional claims. However, at this stage, the court believes judicial efficiency and  
 3 economy is best served by limiting the number of claims asserted before defendants spend time  
 4 and resources preparing invalidity contentions.

5 The court also notes that, to the extent many of the same claims were asserted in SRI's  
 6 litigation against Google, Inc. (SRI argues that defendants already "have in their possession  
 7 extensive invalidity contentions from the previous case for 43 of the 74 asserted claims," Disc.  
 8 Dispute Joint Rep. 7), the fact that the defendant in that case apparently did not seek to limit the  
 9 number of claims asserted should not prejudice defendants from doing so here. Since SRI's  
 10 action against Google, many of the claims have emerged from reexamination with amendments or  
 11 altered scope.

12 Accordingly, the court ORDERS SRI to limit its asserted claims to 30 on or before March  
 13 8, 2013, which gives defendants sufficient time (three weeks) to prepare invalidity contentions  
 14 with respect to those 30 claims.

15 The court further ORDERS each defendant to limit its invalidity contentions to four  
 16 anticipatory references and four obviousness combinations, as the court sees no legitimate basis  
 17 for asserting more references in this case.

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**IT IS SO ORDERED**

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Dated: February 15, 2013

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*Ronald M. Whyte*

Honorable Ronald M. Whyte  
 United States District Judge